MONTANA LEGISLATIVE HISTORY

Chapter 265 1977

Bill H _____ S 4 Original bill & history ✓ C

H. Committee on Bus & Industry			S. Committee on Bus & Industry		
Hearing Date(s)	_____	___C	Hearing Date(s)	_____	___C
	_____	___C		1/8	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C		out 1/8	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 4

INTRODUCED BY HAZELBAKER

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO TRADE AND COMMERCE; AMENDING SECTIONS 15-2006, 66-209, 66-212, 66-221, 66-229, 85-105, 85-107, 85-407, 85-408, 85-409, 85-410, 87A-1-101, 87A-9-302, 87A-9-302.2, 87A-9-401, 87A-9-405, 87A-9-406, AND 93-2830, R.C.M. 1947; AND REPEALING SECTIONS 66-214, 66-215, 66-217, AND 66-218, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-2006, R.C.M. 1947, is amended to read as follows:

"15-2006. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under ~~section~~ 15-2014, unless he is registered under this ~~act~~ chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:

~~(1)~~(a) he is so registered under this ~~act~~ ~~or~~ chapter;

~~(2)~~(b) he is registered as a broker-dealer under this ~~act~~ chapter; or

~~(3)~~(c) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer, or a salesman, acting as an ~~agents~~ agent for an issuer, ~~or issuers~~ or acting as ~~agents~~ an agent for a broker-dealer in the offer or sale of securities for an issuer, ~~or issuers~~ or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner ~~shall prescribe~~ prescribes and payment of the fee prescribed in ~~section~~ 15-2016. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least ~~one~~ ~~(1)~~ year next prior to the date of application for registration. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. ~~Said~~ The bond ~~to~~ shall be in the sum of ~~five thousand dollars ($5,000.00)~~, payable to the state of Montana, and conditioned upon the faithful compliance with the provisions of this ~~act~~ chapter, and shall provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

INTRODUCED BILL

(4) If no denial order is in effect and no proceeding is pending under ~~subdivision~~ subsection (8) of this section, registration becomes effective at noon of the ~~thirtieth~~ (30th) day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional ~~sixty (60)~~ days; the The effective day after the filing of any amendment shall be noon of the ~~thirtieth (30th)~~ day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman, or investment adviser shall be effective until ~~the first (1st) day of~~ March 1 next following such registration and may be renewed ~~as hereinafter provided~~. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for

registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ~~ninety (90)~~ days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under ~~section~~ 15-2013 (1), as may be prescribed by the commissioner. All records so required shall be preserved for ~~three (3)~~ years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner ~~deems~~ considers necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in

the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this ~~act~~ chapter or a predecessor ~~act~~ law or any rule or order under this ~~act~~ chapter or a predecessor ~~act~~ law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past ~~five--(5)~~ years by the securities administrator of any other

state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this ~~act~~ chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but:

~~(a)~~(i) the commissioner may not institute a revocation or suspension proceeding under this ~~clause~~ subsection (f) more than ~~one--(1)~~ year from the date of the order relied on; and

~~(b)~~(ii) he may not enter any order under this ~~clause~~ subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this ~~clause~~ subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

or

(i) has not complied with a condition imposed by the commissioner under ~~subdivision~~ subsection (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this ~~clause~~ subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under ~~subdivision~~ subsection (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within ~~fifteen (15)~~ days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within ~~fifteen (15)~~ days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity

for hearing, may affirm, modify, or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 2. Section 66-209, R.C.M. 1947, is amended to read as follows:

"66-209. Power of city authorities. The city council or other corresponding authority of each city may designate such place or places therein for ~~the sale by auction of horses, carriages, and household furniture,~~ auction sales as ~~they deem~~ it considers expedient."

Section 3. Section 66-212, R.C.M. 1947, is amended to read as follows:

"66-212. Commissions and penalty for overcharge. No auctioneer ~~must~~ may demand or receive a higher compensation for his services than a commission of ~~one per cent~~ 1% on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this section, ~~in addition to the criminal penalty,~~ forfeits to

the party aggrieved ~~two-hundred-and-fifty-dollars~~ $250, and must refund the excess of charge."

Section 4. Section 66-221, R.C.M. 1947, is amended to read as follows:

"66-221. Definitions. (1) The words "public auction sales" when used in this act, ~~shall~~ mean the offering for sale or selling of new goods, wares, or merchandise to the highest bidder or offering for sale or selling of new goods, wares, or merchandise at a high price and then offering the same at successive lower prices until a buyer is secured, in the manner defined and set out in ~~sections~~ 66-213 and ~~66-214~~ 87A-2-328.

(2) The words "new goods, wares, and merchandise", when used in this act, ~~shall~~ mean ~~and include~~ all goods, wares, and merchandise not previously sold at retail."

Section 5. Section 66-229, R.C.M. 1947, is amended to read as follows:

"66-229. Exemptions ~~from act~~. The provisions of this act ~~shall~~ do not extend to:

(1) the sale at public auction of livestock, farm machinery, ~~or~~ farm produce, or other items commonly sold at farm sales~~;~~ ~~or to~~

(2) auction sales of new merchandise by individuals ~~of new merchandise~~ who maintain an established retail sales place of business and inventory of goods in the county in

which the sale is to be held~~;~~ ~~and to~~

(3) auction sales under the direction of any court or court officers as may be required by law~~;~~ ~~nor shall it apply~~ to

(4) sales made to dealers by commercial travelers or selling agents in the usual course of business~~;~~ ~~nor to~~

(5) a bona fide sale of goods, wares, and merchandise by sample for future delivery~~;~~ or by sales made by sheriffs, constables, or other public officers selling goods, wares, and merchandise according to law~~;~~ ~~nor to~~ or

(6) bona fide assignees or receivers appointed in this state selling goods, wares, and merchandise for the benefit of creditors."

Section 6. Section 85-105, R.C.M. 1947, is amended to read as follows:

"85-105. Penalties. The penalty for forging, counterfeiting, or unlawful using of trade-marks is a ~~misdemeanor~~ as provided in 94-6-308 or 94-6-310, whichever is applicable."

Section 7. Section 85-107, R.C.M. 1947, is amended to read as follows:

"85-107. Penalties. Every person who violates the provisions of ~~the preceding section~~ 85-106 is punishable as provided in ~~sections 94-35-226 and 94-35-230~~ 94-6-308 and 94-6-310."

Section 8. Section 85-407, R.C.M. 1947, is amended to read as follows:

"85-407. Powers of receiver ~~appointed--by--court~~ -- proof of damages -- ~~court~~ jurisdiction. (1) When a receiver is appointed by the court pursuant to this act, he has the power to sue for, collect, receive, and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

(2) Any person who has suffered damages as a result of the use ~~of~~ or employment of any unlawful ~~practices~~ practice and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required."

Section 9. Section 85-408, R.C.M. 1947, is amended to read as follows:

"85-408. ~~Private--action--for--damages--treble--damages~~ Damages -- notice to public agencies -- attorney fees -- prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by ~~section 2 of 85-402 of this act~~, may bring an individual but not a class action under the rules ~~or~~ of civil procedure in the district court of the county in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or ~~two hundred dollars ($200)~~, whichever is greater. The court may, in its discretion, award up to three ~~(3)~~ times the actual damages sustained and may provide such equitable relief as it ~~deems~~ considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon

entry of any *judgment or decree in* the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) *Any permanent* injunction, judgment, or order of the court made under ~~section 5 <{85-405<} of this act~~ shall be prima facie evidence in an action brought under ~~section 8 <{this section<} of this act~~ that the respondent used or employed a method, act, or practice declared unlawful by ~~section 2 <{85-402<} of this act.~~"

Section 10. Section 85-409, R.C.M. 1947, is amended to read as follows:

"85-409. Assurance of voluntary compliance. In the administration of this act, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice ~~deemed~~ considered to be *violative* of the act from any person who has engaged or was about to engage in any such method, act, or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business, or the district court of *Lewis and Clark county* County. Assurance of voluntary compliance is not an

admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the *public interest*, *pursuant* to ~~section 5 <{85-405<}~~.

Section 11. 'Section 85-410, R.C.M. 1947, is amended to *read as follows:*

"85-410. Investigative demand on unlawful practices. (1) When it appears to the department that the person has engaged *in*, *is engaging in*, *or is* about to engage in any act or practice declared to be unlawful by this act, or when the department believes it to be in the public interest that an *investigation* should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, *at such* reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or

offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand, or within ~~twenty (20)~~ days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court where of the county in which the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark ~~county~~ County."

Section 12. Section 87A-1-101, R.C.M. 1947, is amended to read as follows:

"87A-1-101. Short title. (1) This act shall be known and may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9 of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise."

Section 13. Section 87A-9-302, R.C.M. 1947, is amended to read as follows:

"87A-9-302. When filing is required to perfect security interest -- security interests to which filing provisions of this chapter do not apply. (1) A financing statement must be filed to perfect all security interests

except the following:

(a) a security interest in collateral in possession of the secured party under ~~section~~ 87A-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under ~~section~~ 87A-9-304 or in proceeds for a 10-day period under ~~section~~ 87A-9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of ~~$2500~~ $2,500; but filing is required for a fixture under ~~section~~ 87A-9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under ~~section~~ 87A-9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (~~section~~ 87A-4-208) or arising under the ~~Chapter~~ chapter on ~~Sales~~ sales or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original

debtor.

(3) ~~The~~ Except for financing statements filed pursuant to 87A-9-302.2, the *filing provisions* of this chapter do not apply to a security interest in property subject to a statute:

(a) of the United States which provides for a national *registration* or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) ~~A~~ Except for financing statements filed pursuant to 87A-9-302.2, a security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by *indication* of the security interest on a certificate of title or a duplicate thereof by a public *official*."

Section 14. Section 87A-9-302.2, R.C.M. 1947, is amended to read as follows:

"87A-9-302.2. ~~Place of filing of utility~~ Utility financing statement -- place of filing -- contents -- perfection of security interest. ~~Financing statements of a transmitting utility, notwithstanding sections 87A-9-302(3), 87A-9-302(4), 87A-9-401(1), 87A-9-402, 87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406 of the Uniform Commercial Code,~~

~~(a)~~(1) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state~~;~~.

~~(b)~~(2) When the *financing* statement covers goods of a transmitting utility which are or are to become *fixtures*, no description of the real estate concerned is required~~;~~.

~~(c)~~(3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to ~~the Uniform Commercial Code as provided in~~ subsection ~~(a)~~(1)."

Section 15. Section 87A-9-401, R.C.M. 1947, is amended to read as follows:

"87A-9-401. Place of filing -- erroneous filing -- removal of collateral. (1) ~~The~~ Except for financing statements filed pursuant to 87A-9-302.2, the *proper* place to *file in order* to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or *farm products*, or accounts, contract rights, or general intangibles arising from or relating to the sale of *farm* products by a farmer, or consumer goods, then in the office of the county clerk *and recorder* in the county of the

debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops in the office of the county clerk and recorder in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in ~~section~~ 87A-9-103 determine whether filing is necessary in this state."

Section 16. Section 87A-9-405, R.C.M. 1947, is amended to read as follows:

"87A-9-405. Assignment of security interest -- duties of filing officer -- fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in ~~section~~ 87A-9-403(4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be ~~fifteen dollars--($15.00)~~. In all other cases the uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be ~~two--dollars ($2)~~.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a

separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the *financing statement*, and the name and address of the assignee, ~~and containing~~ and except for financing statements filed pursuant to 87A-9-302.2, a description of the collateral assigned. A copy of the *assignment* is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark *such separate* statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement *has been indexed* in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed *in accordance* with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock, of railroads or street railways, the fee for filing, indexing, and furnishing filing data *about such a* separate statement of assignment shall be ~~fifteen dollars ($15.00)~~. In all other cases the uniform fee for filing, indexing, and furnishing filing data about such a separate statement of *assignment shall be* ~~two dollars ($2)~~.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

Section 17. Section 87A-9-406, R.C.M. 1947, is amended to read as follows:

"87A-9-406. Release of collateral -- *duties of filing* officer -- fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient *if it contains a description* of the collateral being released (except for financing statements filed pursuant to 87A-9-302.2), the name and address of the debtor, the name and address of the *secured party, and the* file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note *the same upon the margin* of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, *the statement of release* must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirement applicable to release of *mortgages. If* the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and

noting such a statement of release shall be ~~fifteen dollars ($15.00)~~. In all other cases the uniform fee for filing and noting such a statement of release shall be ~~two dollars ($2)~~."

Section 18. Section 93-2830, R.C.M. 1947, is amended to read as follows:

"93-2830. Who may be sued on overdue negotiable instruments -- transfer. A holder of overdue bills of exchange and promissory notes, as described in 87A-3-104 (2) may sue all the parties thereto collectively or severally, but if any of the parties thereto, who are not primarily liable for the payment, ~~shall~~ tender the amount of principal, interest, and costs thereon, ~~he~~ the holder shall transfer the paper, ~~and if~~ If a judgment be rendered thereon, ~~he~~ the holder shall assign the judgment to such party so making the tender, and in case of refusal he may be compelled to do so by summary proceedings, instituted for that purpose ~~instituted~~, in the district court of the district in which he ~~shall reside~~ resides."

Section 19. Section 84-2412, R.C.M. 1947, is amended to read as follows:

"84-2412. Employment of help -- disposal of license money. The ~~state~~ department of revenue ~~is hereby authorized~~ to may employ such clerical and field assistance as may be found necessary to carry out and ~~to~~ administer the

provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with ~~five dollars ($5)~~ of the fee collected from each store license sold credited to an earmarked revenue fund for administration of ~~the Unfair Practices Act~~ Title 51, chapter 1, by the department of business regulation and the rest to the credit of the general fund."

Section 20. Repealer. Sections 66-214, 66-215, 66-217, and 66-218, R.C.M. 1947, are repealed.

-End-

45th LEGISLATIVE SESSION

COMMITTEE ON Business and Industry

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO ~~NOT~~ PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 4	1/3/77	1/8/77	1/8/77	1/8/77					
SB 4	1/13/77	~~RECONSIDERED~~ 1/18-1/25	1/25/77			1/25/77			
SB 5	1/3/77	1/8/77	1/8/77	1/8/77					
SB 6	1/3/77	1/8/77	1/8/77			1/8/77			
SB 36	1/4/77	1/18-2/1	2/1/77			2/1/77			
SB 39	1/5/77								
SB 54	1/7/77	1/13/77	1/13/77			1/13/77			
SB 69	1/10/77	1/20-1/25	1/25/77	1/25/77					
SB 73	1/11/77	1/18-1/25	1/25/77			1/25/77			
SB 84	1/12/77	2/5/77	2/5/77			2/5/77			
SB 85	1/12/77	2/3-2/16	2/16/77			2/16/77			
SB 91	1/13/77	1/27/77	1/27/77	1/27/77					
SB 111	1/17/77	1/27/77	1/27/77			1/27/77			
SB 126	1/18/77								
SB 146	1/19/77								
SB 170	1/20/77	2/1-2/10	2/10/77			2/10/77			

(Use Separate Sheet for Senate, House Bills, and Resolutions)

January 8, 1977
11:00 a.m.

MINUTES OF THE MEETING

BUSINESS AND INDUSTRY COMMITTEE

MONTANA STATE SENATE

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 of the State Capitol Building at 11:00 a.m.

ROLL CALL: All members were present with the exception of Senator Kolstad who was excused.

Chairman Hazelbaker introduced Dave Cogley, representing the Code Commissioner, who drafted Senate Bills 4, 5, and 6. Mr. Cogley stated that he has been working on the recodification project ever since the last session. The purpose of recodification is to make it simpler for a person looking for a particular law or particular area of law. If they can find the general area of law then it is easier to find the law they are looking for. When laws are introduced and go through a session there is always a possibility of duplication. Also, laws tend to become obsolete after a number of years. One of his major responsibilities is to rearrange the laws in a more logical fashion.

Mr. Cogley stated that they have contacted all of those concerned, legal offices and persons who are interested in this area of the law, and Government offices that would be affected and they think they have their full concurrence on the things that they have done, such as cleaned up garbled language, etc.

Chairman Hazelbaker stated that before we started looking at the bills, in the back of each bill attached is a green sheet of paper with all of the explanations and changes that have been done. He stated this is helpful if they would like to follow it.

SENATE BILL 4, "An Act For The General Revision and Clarification of Laws Relating to Trade and Commerce." Mr. Cogley pointed out changes in wording and substitutions which he had made, such as substituting the words "auction sales" for other wording on page 8, line 15. After some discussion of the bill, Senator Lowe moved that Senate Bill 4 Do Pass. All were in favor.

SENATE BILL 5, "An Act to Generally Revise and Clarify the Laws Relating to Credit Transactions and Relationships." Mr. Cogley stated that he ha made some changes in this bill too. Section 3, page 3, lines 15 and 16 were changed because it did not make sense the way it was written in the codes. After some discussion, Senator Devine moved that Senate Bill Do Pass. All were in favor.

STANDING COMMITTEE REPORT

January 8 19 77

MR. President

We, your committee on Business and Industry

having had under consideration SENATE Bill No. 4

Respectfully report as follows: That SENATE Bill No. 4

DO PASS

FRANK W. HAZELBAKER, Chairman.

STATE PUB. CO.
Helena, Mont.

BUSINESS AND INDUSTRY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 610	To provide for or change fees and registration for applicants of the boards of the Department of Professional and Occupational Licensing	2/01/77	Manuel	2/18/77	AS AMENDED DO PASS	2/23/77
HB 660	To require a public utility to set forth the cost per unit of consumption on all bills issued to consumers	2/03/77	Courtney	2/16/77	DO NOT PASS	2/16/77
HB 667	To authorize municipalities to compel a public utility to remove or bury utility lines in a designated central business district when public health and safety are endangered	2/03/77	Fagg	2/16/77	AS AMENDED DO PASS	2/23/77
HJR 50	To request the commissioner of insurance to create an insurance advisory council	2/03/77	Bengtson	2/18/77	DO NOT PASS	2/22/77
SB 4	Revising laws relating to trade and commerce	2/03/77	Hazelbaker	3/04/77	CONCURRED IN	3/04/77
SB 107	Increasing the fees which local governments may charge the holder of a license under the alcoholic beverage code	2/03/77	Regan	3/09/77 3-22-77	BE CONCURRED IN CJ	4/06/77 4/26

HOUSE BUSINESS AND INDUSTRY COMMITTEE

March 4, 1977

The meeting was called to order at 10:15 a.m., in Room 434, with all members present with the exception of Reps. Scully and Bradley.

Senate Bill No. 4, 5, and 6 were discussed. Sen. Hazelbaker, sponsor, gave the reason for the recodification of these bills. He then introduced Mr. Dave Cogley. Mr. Cogley said it would be easier if he could just answer any questions relative to the bills rather than going through each one.

Sen. Hazelbaker stated in closing that all interested parties are in concurrence with the bills.

There were no proponents, opponents or questions from the committee.

Senate Bill No. 84 was discussed. Sen. Lowe, sponsor, stated that the bill dealt with petroleum and is a complete redraft of Chapter 2. The bill clearly defines liquified petroleum dealer.

Mr. Delano stated that he would answer any questions relative to the bill (testimony attached).

Rep. Aageson asked Mr. Delano why the correction of fuel sales is at 60° Fahrenheit. Mr. Delano replied by stating that the average temperature in Montana is 43°.

Senate Bill No. 218 was discussed. Sen. Lowe, sponsor, said the bill had come from the Insurance Commissioners office. The insurance consultants should come under a certain designation or they should be required to pass an examination. Also, they could be certified as a public insurance consultant. The examination given by Drake University would cost $100 per question. There are approximately 20 questions which include 10 for health and life--10 for property and casualty. The number of applicants vary from 8 to 10 per year. The fee for taking second or subsequent examinations shall not exceed $50.

Mr. Chip Urdman expressed his support in the bill.

There were no opponents.

Sen. Lowe stated that the applicants would take the test in the office and the results would be sent to Drake University for correction.

The committee then went into executive session.

Rep. Aageson moved that Senate Bill No. 4 BE CONCURRED IN. It was concurred in by a unanimous vote.

Rep. Metcalf moved that Senate Bill No. 5 BE CONCURRED. The motion was carried unanimously.

SENATE BILL NO. 4

INTRODUCED BY HAZELBAKER

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO TRADE AND COMMERCE; AMENDING SECTIONS 15-2006, 66-209, 66-212, 66-221, 66-229, 84-2412, 85-105, 85-107, 85-407, 85-408, 85-409, 85-410, 87A-1-101, 87A-9-302, 87A-9-302.2, 87A-9-401, 87A-9-405, 87A-9-406, AND 93-2830, R.C.M. 1947; and repealing sections 66-214, 66-215, 66-217, AND 66-218, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-2006, R.C.M. 1947, is amended to read as follows:

"15-2006. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under ~~section~~ 15-2014, unless he is registered under this ~~act~~ chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:

~~(1)~~(a) he is so registered under this ~~act or~~ chapter;

~~(2)~~(b) he is registered as a broker-dealer under this ~~act~~ chapter; or

~~(3)~~(c) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer~~,~~ or a salesman, acting as an ~~agents~~ agent for an issuer~~,~~ ~~or issuers~~ or acting as ~~agents~~ an agent for a broker-dealer in the offer or sale of securities for an issuer~~,~~ ~~or issuers~~ or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner ~~shall prescribe~~ prescribes and payment of the fee prescribed in ~~section~~ 15-2016. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least ~~one (1)~~ year next prior to the date of application for registration. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. ~~Said~~ The bond ~~to~~ shall be in the sum of ~~five thousand dollars ($5,000.00)~~, payable to the state of Montana~~,~~ and conditioned upon the faithful compliance with the provisions of this ~~act~~ chapter, and shall provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information

the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under ~~subdivision~~ subsection (8) of this section, registration becomes effective at noon of the ~~thirtieth~~ (30th) day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional ~~sixty (60)~~ days, ~~the~~ The effective day after the filing of any amendment shall be noon of the ~~thirtieth (30th)~~ day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman, or investment adviser shall be effective until ~~the first (1st) day of~~ March 1 ~~next~~ following such registration and may be renewed ~~as hereinafter provided~~. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained

in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ~~ninety~~ (90) days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under ~~section~~ 15-2013 (1), as may be prescribed by the commissioner. All records so required shall be preserved for ~~three (3)~~ years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner ~~deems~~ considers necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the

public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this ~~act~~ chapter or a predecessor ~~act~~ law or any rule or order under this ~~act~~ chapter or a predecessor ~~act~~ law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past

~~five-(5)~~ years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this ~~act~~, chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but:

~~(a)~~(i) the commissioner may not institute a revocation or suspension proceeding under this ~~clause~~ subsection (f) more than ~~one--(1)~~ year from the date of the order relied on;; and

~~(b)~~(ii) he may not enter any order under this ~~clause~~ subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this ~~clause~~ subsection (h) without a finding

of insolvency as to the broker-dealer or investment adviser; ~~or~~

(i) has not complied with a condition imposed by the commissioner under ~~subdivision~~ subsection (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this ~~clause~~ subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under ~~subdivision~~ subsection (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within ~~fifteen (15)~~ days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within ~~fifteen (15)~~ days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or

ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 2. Section 66-209, R.C.M. 1947, is amended to read as follows:

"66-209. Power of city authorities. The city council or other corresponding authority of each city may designate such place or places therein for ~~the sale by auction of horses, carriages, and household furniture,~~ auction sales as ~~they deem~~ it considers expedient."

Section 3. Section 66-212, R.C.M. 1947, is amended to read as follows:

"66-212. Commissions and penalty for overcharge. No auctioneer ~~must~~ may demand or receive a higher compensation for his services than a commission of ~~one per cent~~ 1% on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this

section~~,--in-addition-to-the-criminal--penalty,~~ forfeits to the party aggrieved ~~two-hundred-and-fifty-dollars~~ $250, and must refund the excess of charge."

Section 4. Section 66-221, R.C.M. 1947, is amended to read as follows:

"66-221. Definitions. (1) The words "public auction sales" when used in this act, ~~shall~~ mean the offering for sale or selling of new goods, wares, or merchandise to the highest bidder or offering for sale or selling of new goods, wares, or merchandise at a high price and then offering the same at successive lower prices until a buyer is secured, in the manner defined and set out in ~~sections~~ 66-213 and ~~66-214~~ 87A-2-328.

(2) The words "new goods, wares, and merchandise", when used in this act, ~~shall~~ mean ~~and--include~~ all goods, wares, and merchandise not previously sold at retail."

Section 5. Section 66-229, R.C.M. 1947, is amended to read as follows:

"66-229. Exemptions ~~from-act~~. The provisions of this act ~~shall~~ do not extend to:

(1) the sale at public auction of livestock, farm machinery, ~~or~~ farm produce, or other items commonly sold at farm sales~~,; or-to~~

(2) auction sales of new merchandise by individuals ~~of new--merchandise,~~ who maintain an established retail sales

place of business and inventory of goods in the county in which the sale is to be held~~,; and-to~~

(3) auction sales under the direction of any court or court officers as may be required by law~~; nor-shall-it-apply to~~

(4) sales made to dealers by commercial travelers or selling agents in the usual course of business~~,; nor-to~~

(5) a bona fide sale of goods, wares, and merchandise by sample for future delivery~~,~~ or by sales made by sheriffs, constables, or other public officers selling goods, wares, and merchandise according to law~~,; nor-to~~ or

(6) bona fide assignees or receivers appointed in this state selling goods, wares, and merchandise for the benefit of creditors."

Section 6. Section 85-105, R.C.M. 1947, is amended to read as follows:

"85-105. Penalties. The penalty for forging, counterfeiting, or unlawful using of trade-marks is a ~~misdemeanor~~ as provided in 94-6-308 or 94-6-310, whichever is applicable."

Section 7. Section 85-107, R.C.M. 1947, is amended to read as follows:

"85-107. Penalties. Every person who violates the provisions of ~~the-preceding-section~~ 85-106 is punishable as provided in ~~sections--94-35-226-and-94-35-230~~ 94-6-308 and

94-8-310."

Section 8. Section 85-407, R.C.M. 1947, is amended to read as follows:

"85-407. Powers of receiver ~~appointed--by--court~~ -- proof of damages -- ~~court~~ jurisdiction. (1) When a receiver is appointed by the court pursuant to this act, he has the power to sue for, collect, receive, and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

(2) Any person who has suffered damages as a result of the use ~~of~~ or employment of any unlawful ~~practices~~ practice and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the

assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required."

Section 9. Section 85-408, R.C.M. 1947, is amended to read as follows:

"85-408. ~~Private--action--for--damages--treble-damages~~ Damages -- notice to public agencies -- attorney fees -- prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by ~~section--2--[85-402]--of--this act~~, may bring an individual, but not a class action under the rules ~~or~~ of civil procedure in the district court of the county in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or ~~two-hundred-dollars-($200)~~, whichever is greater. The court may, in its discretion, award up to three ~~(3)~~ times the actual damages sustained and may provide such equitable relief as it ~~deems~~ considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the

department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment, or order of the court made under ~~section 5 [85-405] of this act~~ shall be prima facie evidence in an action brought under ~~section 8 [this section] of this act~~ that the respondent used or employed a method, act, or practice declared unlawful by ~~section 2 [85-402] of this act~~."

Section 10. Section 85-409, R.C.M. 1947, is amended to read as follows:

"85-409. Assurance of voluntary compliance. In the administration of this act, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice ~~deemed~~ considered to be violative of the act from any person who has engaged or was about to engage in any such method, act, or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business, or the district court of Lewis and Clark ~~county~~

County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to ~~section 5 [85-405]~~."

Section 11. Section 85-410, R.C.M. 1947, is amended to read as follows:

"85-410. Investigative demand on unlawful practices. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any act or practice declared to be unlawful by this act, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the

investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand, or within ~~twenty (20)~~ days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court ~~where~~ of the county in which the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark ~~county~~ County."

Section 12. Section 87A-1-101, R.C.M. 1947, is amended to read as follows:

"87A-1-101. Short title. (1) This act shall be known and may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9 of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise."

Section 13. Section 87A-9-302, R.C.M. 1947, is amended to read as follows:

"87A-9-302. When filing is required to perfect security interest -- security interests to which filing provisions of this chapter do not apply. (1) A financing

statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under ~~section~~ 87A-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under ~~section~~ 87A-9-304 or in proceeds for a 10-day period under ~~section~~ 87A-9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of ~~$2500~~ $2,500; but filing is required for a fixture under ~~section~~ 87A-9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under ~~section~~ 87A-9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (~~section~~ 87A-4-208) or arising under the ~~Chapter~~ chapter on ~~Sales~~ sales or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest

against creditors of and transferees from the original debtor.

(3) ~~The~~ Except for financing statements filed pursuant to 87A-9-302.2, the filing provisions of this chapter do not apply to a security interest in property subject to a statute:

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) ~~A~~ Except for financing statements filed pursuant to 87A-9-302.2, a security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official."

Section 14. Section 87A-9-302.2, R.C.M. 1947, is amended to read as follows:

"87A-9-302.2. ~~Place--of--filing--of--utility~~ Utility financing statement -- place of filing -- contents -- perfection of security interest. ~~Financing statements of a transmitting utility, notwithstanding sections 87A-9-302(3), 87A-9-302(4), 87A-9-401(1), 87A-9-402, 87A-9-403, 87A-9-404,~~

~~87A-9-405 and 87A-9-406 of the Uniform Commercial Code,~~ ~~(a)~~ (1) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state~~:~~.

~~(b)~~ (2) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required~~:~~.

~~(c)~~ (3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to ~~the Uniform Commercial Code as provided in~~ subsection ~~(a)~~(1)."

Section 15. Section 87A-9-401, R.C.M. 1947, is amended to read as follows:

"87A-9-401. Place of filing -- erroneous filing -- removal of collateral. (1) ~~The~~ Except for financing statements filed pursuant to 87A-9-302.2, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the

office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops in the office of the county clerk and recorder in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is

thereafter changed.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in ~~section~~ 87A-9-103 determine whether filing is necessary in this state."

Section 16. Section 87A-9-405, R.C.M. 1947, is amended to read as follows:

"87A-9-405. Assignment of security interest -- duties of filing officer -- fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in ~~section~~ 87A-9-403(4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be ~~fifteen dollars ($15.00)~~. In all other cases the uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be ~~two dollars ($2)~~.

(2) A secured party may assign of record all or a part

of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, ~~and~~ the name and address of the assignee, ~~and containing~~ and except ~~for financing statements filed pursuant to 87A-9-302,~~ AS PROVIDED IN 87A-9-302.2(B), a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be ~~fifteen dollars~~ ($15.00). In all other cases the uniform fee for filing,

indexing, and furnishing filing data about such a separate statement of assignment shall be ~~two dollars~~ ($2).

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

Section 17. Section 87A-9-406, R.C.M. 1947, is amended to read as follows:

"87A-9-406. Release of collateral -- duties of filing officer -- fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released (except ~~for financing statements filed pursuant to 87A-9-302,~~ AS PROVIDED IN 87A-9-302.2(B)), the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the

requirement applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be ~~fifteen dollars ($15.00)~~. In all other cases the uniform fee for filing and noting such a statement of release shall be ~~two dollars ($2)~~."

Section 18. Section 93-2830, R.C.M. 1947, is amended to read as follows:

"93-2830. Who may be sued on overdue negotiable instruments -- transfer. A holder of overdue bills of exchange and promissory notes, ~~as described in 87A-3-104(2)~~ may sue all the parties thereto collectively or severally, but if any of the parties thereto, who are not primarily liable for the payment, ~~shall~~ tender the amount of principal, interest, and costs thereon, ~~he~~ the holder shall transfer the paper, ~~and~~ if a judgment be rendered thereon, ~~he~~ the holder shall assign the judgment to such party so making the tender, and in case of refusal he may be compelled to do so by summary proceedings, instituted for that purpose ~~instituted~~, in the district court of the district in which he ~~shall reside~~ resides."

Section 19. Section 84-2412, R.C.M. 1947, is amended to read as follows:

"84-2412. Employment of help -- disposal of license money. The ~~state~~ department of revenue ~~is hereby authorized~~

~~to~~ may employ such clerical and field assistance as may be found necessary to carry out and ~~to~~ administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with ~~five dollars ($5)~~ of the fee collected from each store license sold credited to an earmarked revenue fund for administration of ~~the Unfair Practices Act~~ Title 51, chapter 1, by the department of business regulation and the rest to the credit of the general fund."

Section 20. Repealer. Sections 66-214, 66-215, 66-217, and 66-218, R.C.M. 1947, are repealed.

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